

Before the
Federal Communications Commission
Washington, DC 20554

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OCT 19 1998

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re

Amendment of Section 73.202 (b))	
Table of Assignments)	MM Docket 98-72
FM Broadcast Stations)	RM 9368
(Middlebury, Berlin,)	
and Hardwick, Vermont))	

To: Chief, Allocations Branch

COMMENTS ON COUNTERPROPOSAL

Dynamite Radio, Inc., licensee of FM station WGTK, Middlebury, Vermont (hereinafter "WGTK"), respectfully comments on the counterproposal of Montpelier Broadcasting, Inc. ("MBI"), to allot channel 264A to Hardwick, Vermont, in place of my proposal to move station WGTK from channel 265A at Middlebury to channel 265C2 at Berlin, Vermont. These comments are filed within the 15-day period provided for in the Commission's Public Notice 90005 of October 2, 1998.

I show in these comments that MBI's counterproposal cannot be granted because of received interference. In addition, channel 290A may be allotted to Hardwick. Channel 290A does not conflict with my proposal. In any event, WGTK should be reallocated to channel 265C2 at Berlin.

Attached hereto and incorporated into these comments is the engineering report of Carl E. Smith Consulting Engineers which describes the deficiencies in MBI's proposal. In brief, a Hardwick station on channel 264A will receive substantial interference on U. S. soil from co-channel Canadian station CBF-FM, Montreal. The engineering reports demonstrate that the CBF-FM interference contour, determined as

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prescribed in the 1984 Canadian-U.S. Working Agreement, goes well beyond the Hardwick reference site. Thus, any operation on channel 264A at Hardwick will receive prohibited interference from CBF-FM.¹

Additionally, the attached engineering report shows that channel 290A may be allotted to Hardwick as a specially negotiated limited short spaced allotment. Allotting channel 290A to Hardwick in place of channel 264A allows the Commission to grant both my proposal as well as that of MBI. Moreover, channel 290A at Hardwick will neither cause nor receive interference. It is clearly a better channel than 264A.

I would like to discuss another aspect of MBI's counterproposal. MBI's only interest is in keeping WGTK from upgrading and moving to Berlin. The first portion of its comments argues that WGTK should not move away from Middlebury. MBI does not show why it cares about Middlebury; it has no standing to argue for that community.

MBI further states that it is interested in a station at Hardwick only if the Commission is going to favorably consider WGTK's upgrade. If the Commission were to deny WGTK's proposed move on its own merits, then MBI would have no interest in a Hardwick station. Its only interest in a Hardwick allotment is to block WGTK's proposed move to Berlin, which would result in competition for its own station, WNCS. MBI's proposal for Hardwick is a classic STRIKE petition, filed solely to delay or otherwise deter the Commission from acting on the WGTK move.

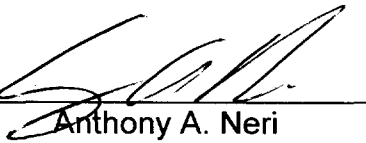
¹ Channel 262A, which was mentioned but not specifically proposed by MBI, will also receive debilitating interference from a Canadian station.

In Walton Broadcasting Co., 43 FCC 2nd 1242 (1973), the Commission affirmed a hearing judge's denial of the renewal application of WMRE on the basis that the station filed an application for the purpose of delaying or obstructing another application. MBI has committed the same infraction. The Commission must investigate whether MBI's counterproposal warrants revocation of its license or other sanctions.

In accordance with Section 1.52 of the Commission's rules, I hereby verify this document.

Respectfully Submitted,

DYNAMITE RADIO, INC.

By 
Anthony A. Neri
Its President

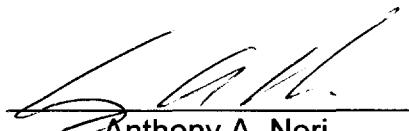
October 17, 1998

Dynamite Radio, Inc.
Radio Station WGTK
74 Exchange Street
P. O. Box 590
Middlebury, Vermont 05753-0590

Certificate of Service

I, hereby certify that a copy of the foregoing "Comments on Counterproposal" has been served by U.S. First Class mail, postage prepaid on this 17th day of October, 1998, upon the following party:

Montpelier Broadcasting, Inc.
c/o Mr. Barry A. Friedman, Esq.
Thompson Hine & Flory, LLP
Suite 800
1920 N Street, NW
Washington, DC 20554


Anthony A. Neri

ENGINEERING STATEMENT IN
SUPPORT OF REPLY COMMENTS

MM DOCKET 98-72

CHANNEL 264A - HARDWICK, VT

Dynamite Radio, Inc.
Middlebury, VT

October 6, 1998

Prepared For: Mr. Anthony Neri
Dynamite Radio, Inc.
74 Exchange Street
Middlebury, VT 05753

CARL E. SMITH CONSULTING ENGINEERS

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Fig. 2.1 - FM Allocation Study - Channel 262A
(100.3 mHz) - Hardwick, VT

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Channel 290A - Hardwick, VT

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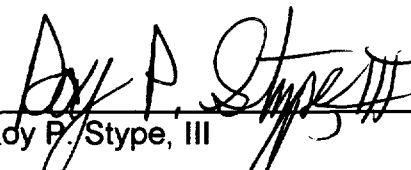
Fig. 3.3 - Predicted Service Contours
Channel 290A - Hardwick, VT

ENGINEERING AFFIDAVIT

State of Ohio)
) ss:
County of Summit)

Roy P. Stype, III, being duly sworn, deposes and states that he is a graduate Electrical Engineer, a qualified and experienced Communications Consulting Engineer whose works are a matter of record with the Federal Communications Commission and that he is a member of the Firm of "Carl E. Smith Consulting Engineers" located at 2324 North Cleveland-Massillon Road in the Township of Bath, County of Summit, State of Ohio, and that the Firm has been retained by Dynamite Radio, Inc., to prepare the attached "Engineering Statement In Support Of Reply Comments - MM Docket 98-72 - Channel 264A - Hardwick, VT."

The deponent states that the Exhibit was prepared by him or under his direction and is true of his own knowledge, except as to statements made on information and belief and as to such statements, he believes them to be true.



Roy P. Stype, III

Subscribed and sworn to before me on **October 6, 1998.**



Notary Public

GAIL M. ELROD, Notary Public
Residence - Summit County
State Wide Jurisdiction, Ohio
My Commission Expires May 28, 2002

/SEAL/

ENGINEERING STATEMENT

1.0 GENERAL

This engineering statement is prepared on behalf of Dynamite Radio, Inc., licensee of Radio Station WGTK - Middlebury, Vermont, and proponent of MM Docket 98-72, which proposes to substitute Channel 265C2 in Berlin, Vermont, for Channel 265A in Middlebury, Vermont, and modify the license of WGTK to specify operation on Channel 265C2 in Berlin. On the July 13, 1998, comment deadline in this proceeding, Montpelier Broadcasting, Inc., the licensee of Radio Station WNCS(FM) - Montpelier, Vermont, filed comments and a counterproposal in this proceeding. The WNCS counterproposal proposed the allotment of Channel 264A to Hardwick, Vermont, as its first local service, in lieu of the proposed upgrade and change in community of license for WGTK. On October 2, 1998, the FCC released a public notice announcing the acceptance of the WNCS counterproposal and establishing a deadline of October 19, 1998, for the filing of reply comments pertaining to this counterproposal. This engineering statement is prepared in support of reply comments on the WNCS counterproposal.

Section 2.0 of this engineering statement documents that the counterproposal to allot Channel 264A to Hardwick is defective, as the proposed allotment reference coordinates, and the entire community of Hardwick, are located well within the 40 dBu F(50,10) contour of co-channel station CBF-FM - Montreal, Quebec. Thus, it will not be possible to operate from these proposed reference coordinates at any power level without receiving prohibited contour overlap from CBF-FM, in violation of FCC Rules and policies. Section 2.0 of this engineering statement also documents that Channel 262A in Hardwick, which was not specifically proposed in the WNCS counterproposal,

but was suggested as a possible alternative channel in the engineering statement filed in support of this counterproposal, is also a defective allotment proposal, for similar reasons.

The information contained in Section 3.0 of this engineering statement provides documentation that the conflict between these two conflicting allotment proposals can be resolved by allotting an alternate channel to Hardwick, permitting both proposals to be granted. Specifically, this data shows that Channel 290A can be allotted to Hardwick as a specially negotiated limited short spaced allotment, while also substituting Channel 265C2 in Berlin for Channel 265A in Middlebury, permitting both of these proposals to be granted and eliminating the need to comparatively evaluate these two proposals.

In summary, the counterproposal in this proceeding proposing to allot Channel 264A to Hardwick, Vermont, is patently defective and should be summarily dismissed without further consideration. The same can be said of the alternate proposal to allot Channel 262A to Hardwick, which is discussed in the engineering statement supporting this counterproposal, but is not formally advanced in this counterproposal. If, however, this counterproposal is found to be acceptable in spite of these deficiencies, this engineering statement documents that there is an alternate Class A channel which can be allotted to Hardwick, eliminating the conflict between these two proposals and permitting both of them to be granted.

2.0 PROPOSAL TO ALLOT CHANNEL 264A TO HARDWICK IS DEFECTIVE

As outlined below, the WNCS counterproposal proposing to allot Channel 264A to Hardwick is defective and cannot be considered in this proceeding. Table 2.0 is an FM spacing study for Channel 264A in Hardwick, which was conducted from the reference coordinates specified in the FCC Public Notice of the WNCS counterproposal:

NL - 44° 30' 18"
WL - 72° 22' 24"

As shown in this table, the proposed use of Channel 264A in Hardwick would be short spaced to CBF-FM - Montreal, Quebec, which operates on Channel 264C1, by more than 95 kilometers. While the September 7, 1984 Working Arrangement for Allotment and Assignment of FM Broadcasting Channels 201 through 300 Under the Canadian-U.S.A. FM Broadcasting Agreement of 1947, as amended, does permit specially negotiated short spaced allotments under some circumstances, such a specially negotiated allotment is not permitted to cause any interference to the short spaced Canadian facility on Canadian soil. Nor is it permitted to receive any interference from the short spaced Canadian facility on U. S. soil. Domestically, Class A stations are protected to their 60 dBu F(50,50) contours. Thus, in order to avoid received interference from CBF-FM in this situation, there can be no overlap between the CBF-FM 40 dBu F(50,10) contour and the 60 dBu F(50,50) contour for the proposed Hardwick allotment.

Figure 2.0 is a detailed allocation study depicting the predicted 40 dBu F(50,10) contour for CBF-FM in relation to the proposed reference coordinates for Channel 264A in Hardwick. Pursuant to the provisions of the September 7, 1984 Working Arrangement for Allotment and Assignment of FM Broadcasting Channels 201 through 300 Under the Canadian-U.S.A. FM Broadcasting Agreement of 1947, as amended,

since CBF-FM occupies an unlimited allotment, this contour was projected assuming uniform terrain and operation with maximum Class C1 facilities of 100 kilowatts effective radiated power at 300 meters above average terrain. As shown in this figure, the proposed reference site for Channel 264A in Hardwick is located inside the CBF-FM 40 dBu F(50,10) contour by a significant distance. Thus, any use of Channel 264A in Hardwick, regardless of power level or directional antenna characteristics would result in prohibited contour overlap with CBF-FM, in violation of this working arrangement and the FCC Rules. Thus, the counterproposal to allot Channel 264A to Hardwick, Vermont, is defective and cannot be considered in this proceeding.

Although it was not specifically proposed in the WNCS counterproposal, the engineering statement supporting the WNCS comments suggests that it might also be possible to allot Channel 262A to Hardwick. As outlined below, however, the alternative possibility of allotting Channel 262A to Hardwick is also defective and, thus, cannot be considered in this proceeding. Table 2.1 is an FM spacing study for Channel 262A in Hardwick, which was conducted from the reference coordinates specified in the FCC Public Notice of the WNCS counterproposal:

NL - 44° 30' 18"
WL - 72° 22' 24"

As shown in this table, the proposed use of Channel 262A in Hardwick would be short spaced to a vacant allotment on Channel 262A in Magog, Quebec, by more than 64 kilometers, as well as to a pending proposal to reallocate this channel from Magog to Sherbrooke.

Figure 2.1 is a detailed allocation study depicting the predicted 40 dBu F(50,10) contour for Channel 262A in Magog in relation to the proposed reference coordinates for Channel 262A in Hardwick. Pursuant to the provisions of the September 7, 1984

Working Arrangement for Allotment and Assignment of FM Broadcasting Channels 201 through 300 Under the Canadian-U.S.A. FM Broadcasting Agreement of 1947, as amended, since Channel 262A in Magog is an unlimited allotment, this contour was projected assuming uniform terrain and operation with maximum Class A facilities of 6 kilowatts effective radiated power at 100 meters above average terrain. As shown in this figure, the proposed reference site for Channel 262A in Hardwick is located just inside the 40 dBu F(50,10) contour for this allotment. Thus, any use of Channel 262A in Hardwick, regardless of power level or directional antenna characteristics would result in prohibited contour overlap with this allotment, in violation of this treaty and the FCC Rules. Thus, the alternate possibility of allotting Channel 262A to Hardwick, Vermont, is defective and cannot be considered in this proceeding. Furthermore, it is not possible to consider the alternate possibility of allotting Channel 262A to Hardwick contingent on the reallocation of Channel 262A from Magog to Sherbrooke, as well established FCC policy requires that counterproposals must be complete and technically feasible at the time they are filed and not contingent on any external event which may, or may not, occur.

TABLE 2.0

FM ALLOCATION STUDY - CHANNEL 264A (100.7 MHz) - HARDWICK, VT

DYNAMITE RADIO, INC.
MIDDLEBURY, VT

STUDY COORDINATES: 44/30/18 72/22/24

STATION -----	LOCATION -----	CHANNEL -----	CLASS -----	SPACING (km) -----	REQUIRED SPACING* (km) -----	NOTES -----
WCMD	Barre, VT	210	A	42.96	10.0	
WRUV	Burlington, VT	211	A	65.81	10.0	
WRUV	Burlington, VT	211	A	65.97	10.0	2
WPNHFM	Plymouth, NH	261	A	100.90	31.0	
ALLOTMENT RULEMAKING	Magog, QU	262	A	86.44	51.0	3, 12
	Sherbrooke, QU	262	A	103.81	51.0	9
WXXK	Lebanon, NH	263	C3	94.65	89.0	1
NEW	St-George-Beauce, QU	263	C1	226.94	168.0	
WTBM	Mexico, ME	264	A	138.57	115.0	
CBFFM	Montreal, QU	264	C1	146.93	243.0	11
WVAY	Wilmington, VT	264	A	177.36	115.0	
WZLX	Boston, MA	264	B	261.51	178.0	
WGTK	Berlin, VT	265	C2	29.91	106.0	9, 11
WGTK	Middlebury, VT	265	A	82.46	72.0	3
WYNZ	Westbrook, ME	265	B1	192.11	96.0	1
CBF10F	Sherbrooke, QU	266	B	107.90	78.0	
WYKRFM	Haverhill, NH	267	A	53.55	31.0	
WCPV	Essex, NY	267	A	85.17	31.0	

* Required Spacing Per Section 73.207 of The FCC Rules

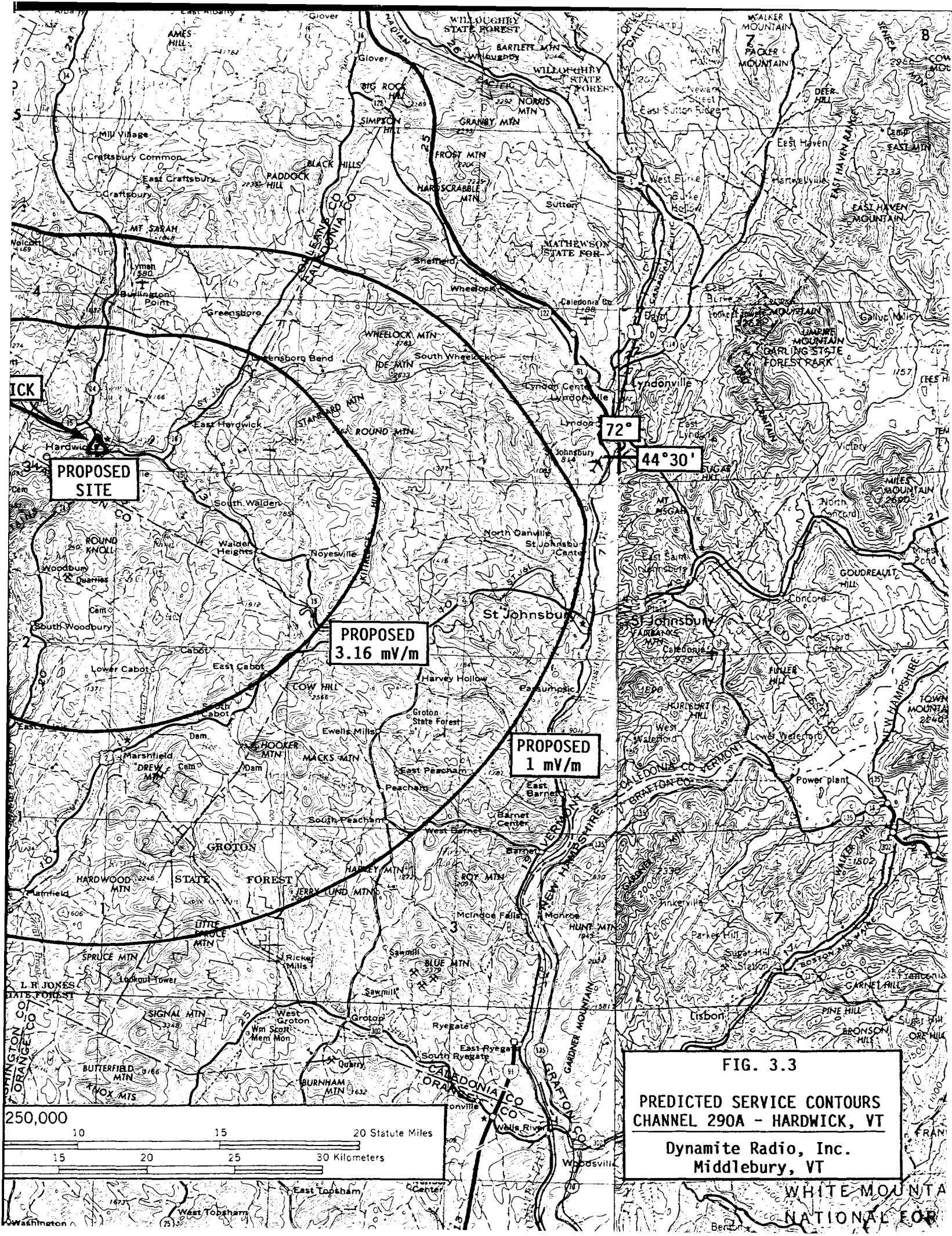
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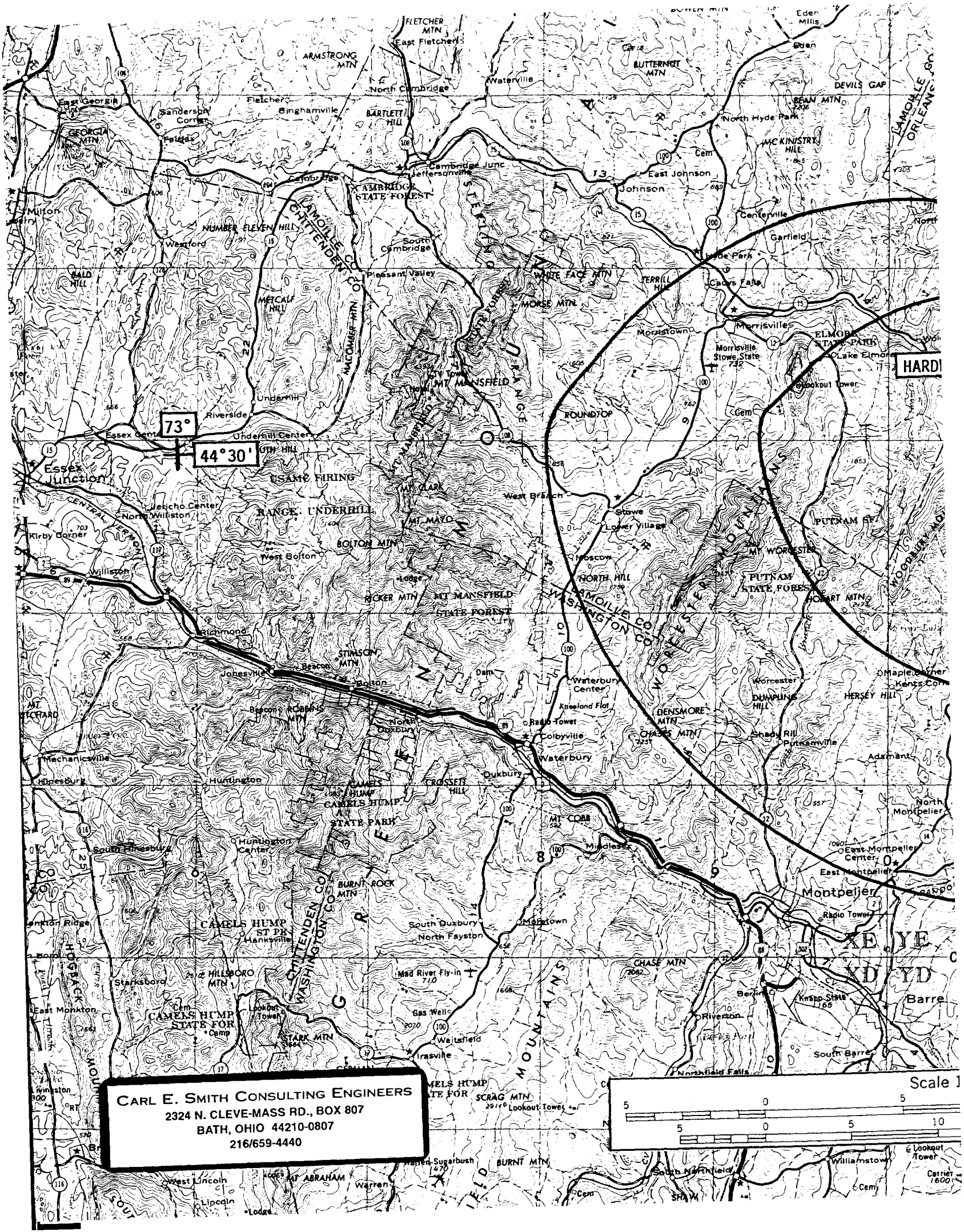
FM ALLOCATION STUDY - CHANNEL 264A (100.7 MHz) - HARDWICK, VT

DYNAMITE RADIO, INC.
MIDDLEBURY, VT

Notes:

- | | |
|--------------------------------------|----------------------------------|
| 1 - Applied For Under Section 73.215 | 7 - Pending Application |
| 2 - Construction Permit | 8 - Petition For Reconsideration |
| 3 - Channel Deletion Proposed | 9 - Proposed Rulemaking |
| 4 - Move From This Channel Ordered | 10 - Rulemaking Petition |
| 5 - Move to This Channel Ordered | 11 - Short-Spaced |
| 6 - One Step Reference Site | 12 - Vacant Allotment |





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